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Encana calls on EPA to abandon Pavillion test wells Casper Star-Tribune - Online

12/07/2012

Encana calls on EPA to abandon Pavillion test wells

2012-12-06T22:00:00Z 2012-12-06T20:16:18Z Encana calls on EPA to abandon Pavillion test wells

By ADAM VOGUE

Star-Tribune energy reporter

trib.com

The company in the center of a groundwater contamination debate thinks the U.S. Environmental Protection Agency should abandon its monitoring wells near Pavillion and refocus its investigation.

Officials representing Encana Oil and Gas said on a conference call Thursday that the federal agency's investigation into whether natural gas production has contaminated groundwater in the Pavillion gas field is flawed and needs a clean start.

The call was scheduled two days before the one-year anniversary of an EPA report tentatively linking hydraulic fracturing to groundwater contamination east of Pavillion. During the call, company officials were critical of EPA methods used in the drilling, collection and sampling processes used by the agency to test local groundwater.

"The EPA should withdraw its draft report," said David Stewart, environmental, health and safety lead for Encana's Wyoming operations. "The data is inaccurate and their conclusion is not supported by the data."

The agency didn't respond directly to the company's requests Thursday, but issued a statement detailing its history in the Pavillion field. The agency added that it is accepting comments on the Pavillion investigation until Jan. 15 and that investigation data will be peer-reviewed.

The EPA drilled two monitoring wells in the Pavillion gas field in summer 2010 in response to complaints about local drinking water. The agency hoped to ascertain whether oil and gas development surrounding several rural homes east of Pavillion was the cause of contamination.

The agency released a draft report in December 2011 tentatively linking the industry's use of hydraulic fracturing, also known as fracking, to water contamination. Encana has criticized EPA's placement and depth of the wells, the methodology employed in drilling and the evidence cited by the EPA in its report.

The agency agreed to re-test the area this year after criticism from the state and Encana. The U.S. Geological Survey conducted the second test and released test data this fall, but without interpretation. Both the agency and Encana have since claimed that the newly gathered data back their opposing claims.

Encana said the focus of the investigation is one of the company's larger problems with what the EPA's done in the Pavillion area.

"This has been a misguided response," Stewart said.

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Stewart said the agency drilled monitoring wells that were far too deep rather than following up on tests of domestic water wells, which Encana believes indicate the real problem in the gas field.

"Most wells sampled exceeded palatability criteria," he said. "Yet the EPA decided not to respond to or investigate or understand why those exceedances were occurring."

Stewart also questioned several "assumptions," which he said the EPA must have made while drafting its report. He said the agency's report indicates it used false information about water flow direction, a sign of failure to understand the geology of the field. According to Stewart, the agency drilled a monitoring well into one geologic formation which the company targeted.

"Hydrocarbons have always been there," he said. "That's why we drilled there in the first place."

Stewart said the company hopes the agency will abandon its deep monitoring wells in the area and shift its attention back to domestic wells.

"Domestic well samples need to be looked at more from a bacterial standpoint, what's contributing to taste, odor and palatability problems," he said. "That was not done."

Data from the EPA and USGS tests in the area -- which is several miles east of the town of Pavillion -- is expected to be peer-reviewed sometime shortly after the public comment period closes in January.

Reach energy reporter Adam Voge at 307-266-0561, or at adam.voge@trib.com. Read his blog at <http://trib.com/news/opinion/blogs/boom> or follow him on Twitter [@vogeCST](https://twitter.com/vogeCST).

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This study makes sense

December 7, 2012

Messenger News

Americans have been drilling wells for oil and gas for more than a century and a half. Hydraulic fracturing - or fracking - has been in use to augment well production for decades.

Yet it has been only during the past few years that a gusher of propaganda about fracking has surfaced. Incredibly, some public officials, such as those in New York state, have allowed it to dictate policy.

What about the facts on fracking and other oil and gas industry practices? A variety of studies indicate there is little or no danger of groundwater being contaminated by chemicals used in fracking, as the industry points out.

Nevertheless, the Environmental Protection Agency has launched a comprehensive study of fracking. EPA official George Paulson said a progress report on the study should be released by the end of this year. A final report is due in 2014, he added.

Good. The EPA's progress report should give scientists, the gas and oil industry, and those worried about fracking opportunities to check the agency's methodology. EPA officials, sometimes accused of bowing to the demands of radical environmentalists rather than basing policy on science, should welcome the oversight.

There indeed are some valid concerns about fracking, primarily involving well casings used to keep chemicals out of groundwater. But rejecting the practice altogether, in view of what appears to be an excellent environmental record, makes no sense. The EPA study should provide solid, science-based guidance that will safeguard the environment while allowing Americans to get at the gigantic supplies of natural gas underneath our feet.

Messenger News

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Expect Significant Changes to Environmental Law Next Term Law.com

12/07/2012

The Obama administration is expected to advance major changes to energy and environmental laws in the next four years. There is already a backlog of pending legislation and proposed regulation to work through, and both environmental and industry groups will press for major reforms.

President Obama saved his first mention of climate change during his re-election campaign for his acceptance speech on the night of Nov. 6. While his silence on the topic preceding that remark caused consternation among some in the environmental community, with his re-election there is little doubt that EPA will proceed with the regulation of greenhouse gas emissions under existing provisions of the federal Clean Air Act. EPA's rules requiring controls on greenhouse gases in air permits for the construction and operation of major sources were upheld last summer by the U.S. Court of Appeals for the D.C. Circuit. In the next few months, EPA is expected to finalize new source performance standards limiting greenhouse gas emissions from power plants, and to propose similar regulations for refineries. EPA is required to act on both of these rules under settlement agreements with several states and environmental groups.

Challenges to several air rules adopted during the first term also are still playing out. EPA has stayed enforcement of the Boiler MACT rule, which has widespread application to America's industrial facilities, since its adoption in March 2011, while the agency reconsidered certain portions of the rule. EPA reportedly is preparing to finalize its changes to the Boiler MACT rule, setting up renewed court challenges to that regulation. Also still pending in the courts are challenges to EPA's mercury and air toxics standard, or MATS, for utilities, and the Cross-State Air Pollution Rule. EPA also is expected to take final action soon on a national ambient air quality standard for very fine particulates (soot), and will continue deliberations on a more stringent ambient standard for ozone. Obama delayed action on the ozone standard in the fall of 2011, pushing it out until at least 2013 which now is upon us.

Obama adopted an "all of the above" energy strategy in his first term (although "all" apparently does not include conventional coal combustion), and that strategy is likely to continue in his second term. The presidential and congressional campaigns saw developing Republican opposition to federal renewable energy programs (objecting that the programs "picked winners" sometimes without success), as well as a late push by Governor Mitt Romney in coal-dependent regions, like southern Ohio. Obama's re-election means continuation of his energy policies, but it also did not sweep away Republican opposition.

An early test of the president's commitment to renewable energy, and of Republican resolve, will come as Congress decides whether to extend the wind energy production tax credit, which is set to expire at the end of 2012. Obama's first term saw approval of 34 wind, solar and geothermal projects on federal lands, with combined production capacity of more than 13,750 megawatts. But even if the wind tax credit is renewed, the rapid pace of renewable energy development that occurred in the past few years is likely to slow. This is due in part to a significant increase in the domestic supply, and corresponding drop in price, of natural gas.

Growth in new drilling technology hydraulic fracturing (fracking) and horizontal drilling has generated an upsurge in the domestic oil and gas industry in the past few years that allowed Obama, during his debates with Romney, to tout historic increases in U.S. natural gas and oil production. But there also has been a corresponding increase in calls to regulate fracking practices. The coming year will see debate over the administration's newly issued proposal to regulate fracking on federal lands, and EPA's ongoing study of potential drinking water resource impacts is slated to be completed in 2014. Fracking will remain a hot topic at the state and local level as well.

Obama's second term also will see continued attention to energy infrastructure. The administration will be asked to

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decide next year whether to authorize a rerouted Keystone XL pipeline from Canada to Texas, bring oil from Canada's tar sands to the Gulf of Mexico. Proposed energy export projects further exemplify the changed energy landscape. While coal remains the odd man out in domestic energy policy, multiple proposals for coal export terminals are working their way through state agencies. Similarly, over a dozen liquefied natural gas export facilities have been proposed. The Department of Energy is poised to issue a report on the economic impacts of proposed LNG exports that will likely inform the development of official policy on that issue. Finally, the growth in renewable electric power generation continues to put pressure on an aging electrical grid, which also faces reliability concerns that are only heightened by experiences like the extensive outages and long delays in restoring power experienced during Superstorm Sandy.

During Obama's second term, EPA will continue to grapple with several threshold issues regarding the reach and applicability of the Clean Water Act. Chief among these is the scope of CWA jurisdiction over "navigable waters," particularly in the context of wetlands. In an effort to clarify divergent decisions from federal appellate courts on this issue, the Supreme Court issued a decision in 2006, *Rapanos v. United States*. The failure of that decision to set out clear standards, however, has created confusion that the courts, EPA, and the Army Corps of Engineers have yet to clarify. In June 2007 and again in December 2010, EPA and the corps issued joint guidance memoranda on how their respective staff may determine CWA jurisdiction under the tests set forth in *Rapanos*. In the spring of 2011, EPA and the corps proposed but never enacted rules on CWA jurisdiction. The Obama administration will likely now revisit the issue.

Another threshold issue, currently pending before the Supreme Court, is the question of whether stormwater permits are required for discharges from ditches and culverts on logging roads. The Supreme Court, in a case of significant importance to public and private landowners and businesses throughout forested areas in the United States, is considering a challenge to a Ninth Circuit decision that reversed decades-old EPA policy in holding that such permits are required. While the case has been pending, EPA has proposed revisions to its regulations to specify which, if any, logging road activity requires stormwater permits. On Nov. 9, EPA sent a final rule to the White House for review. The Supreme Court currently is slated to hear oral argument on Dec. 3, which will likely precede release of EPA's new rule.

EPA also has stated that it intends to propose a rule to strengthen the national stormwater program by June 10, 2013, and complete final action by Dec. 10, 2014. These new rules are likely to affect industrial facilities and municipalities.

In 2009, the Obama administration established an Interagency Ocean Policy Task Force, led by the White House Council on Environmental Quality, to develop recommendations for a national policy that ensures protection, maintenance and restoration of oceans, coasts and the Great Lakes, as well as a framework for coastal and marine spatial planning. Following through on task force recommendations, Obama's second term is likely to see a push for major changes in ocean management, including "zoning" of offshore areas. The administration, acting through the National Ocean Council, is expected to publish a final implementation plan in early 2013. The resulting policy changes if fully implemented are likely to affect many industries: fishing, aquaculture, agriculture, offshore energy development and others.

The next few years also are likely to see a material increase in the number of species listed as "threatened" or "endangered" under the Endangered Species Act, or ESA. The U.S. Fish & Wildlife Service has committed to take final action by 2016 on 251 species currently listed as "candidates" for ESA listing, and to make initial findings on listing eligibility for many more species, as part of a 2011 settlement with Center for Biological Diversity and WildEarth Guardians. The upswing in ESA listing likely to result from this effort will likely complicate resource development in the West and in other regions of the nation.

FWS and NOAA Fisheries are also expected to publish a final rule originally proposed in late 2012 that mandates publication of a draft economic analysis for public comment at the time critical habitat is proposed for ESA-listed species. The rule would require use of the "baseline" approach in that analysis, which limits the scope of economic impacts considered to those for which designation is the "but for" cause.

With an otherwise full regulatory agenda, EPA may find it difficult to focus too much attention on issues involving the

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regulation of solid and hazardous waste. Some commenters have urged that the Comprehensive Environmental Response, Compensation and Liability Act, which went into effect in the 1980s and has not been substantially amended since, is overdue for a comprehensive overhaul; however, other than a few initiatives focused on procedural matters, EPA has not signaled much interest in a more expansive regulatory update. EPA does seem likely to move forward with its proposal to regulate coal combustion residuals (commonly known as coal ash) from electrical power generation under the Resource Conservation and Recovery Act. CCRs currently are exempt from regulation as RCRA hazardous waste. EPA issued a proposed rule in July 2010 that identified different possible alternatives for regulating CCRs as either "special" wastes under RCRA subtitle C or nonhazardous solid wastes under subtitle D. While the proposal has effectively been on hold since 2010, EPA has now indicated that it may adopt a new rule before the end of 2012. Opponents of a proposed rule already are lining up to challenge it in the courts.

On yet another front, a possible sleeper issue for the administration's second term could be the reform of federal chemicals regulation under the Toxic Substances Control Act. TSCA has been on the books now, without substantial amendment, for over 35 years. During that period, regulatory initiatives in other countries, such as the European community's REACH (Registration, Evaluation, Authorisation and Restriction of Chemical Substances) and among the states, such as California's Green Chemistry Initiative, have threatened to make TSCA look obsolete. Efforts to modernize TSCA legislatively have made little progress, although the most recent attempt at TSCA reform, S. 847 (the Safe Chemicals Act of 2011) was voted out of the Senate Environment and Public Works committee along party lines for the first time this summer. EPA administrator Lisa Jackson has been a strong advocate for a more aggressive federal approach toward chemicals regulation overall, and depending on how things shape up within EPA's leadership during the second term, support for TSCA reform could manifest itself in significant new regulatory initiatives.

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EIA OUTLOOK SPURS PUSH FOR EPA TO SET GHG LIMITS ON EXISTING UTILITIES

Inside EPA Weekly Report

12/07/2012

The Energy Information Administration's (EIA) just-released Annual Energy Outlook (AEO) for 2013 predicts a slight decline in greenhouse gas (GHG) emissions from the power sector, prompting calls from some observers for EPA to take stronger and broader regulatory action to cut GHG emissions from existing power generation.

EIA, a federal entity providing independent energy analysis, predicts in the Dec. 4 AEO that domestic energy-related carbon dioxide (CO₂) emissions will fall to 5,455 million metric tons by 2020 and remain more than 5 percent below their 2005 level through 2040, which is "reflecting increased efficiency and the shift to a less carbon-intensive fuel mix." The report is available on InsideEPA.com. (Doc ID: 2418070)

In response, Eileen Claussen, president of the Center for Climate and Energy Solutions -- which describes itself as a nonpartisan climate policy group -- called for EPA to issue a new source performance standard (NSPS) to cut emissions from existing power plants, noting those rules "are legally required but haven't even been proposed."

Claussen added in a Dec. 4 statement that a 5 percent reduction in CO₂ is "a far cry from the 17 percent the United States has pledged to cut [by 2020] to begin addressing the emissions causing our climate to change." She added that it is "reasonable to assume" a 10 percent cut in overall GHGs from 2005 levels in 2020 based on market trends, such as low natural gas prices, efficiency improvements, the EPA GHG tailpipe rules and state carbon caps.

"For the U.S. to assert confidently that it is on track to fulfilling President Obama's 2009 Copenhagen pledge, the administration must move quickly to regulate emissions from existing power plants. To achieve the steeper reductions ultimately needed to avoid the worst potential impacts of climate change will require much stronger action, such as a price on carbon and targeted incentives for critical technologies," Claussen said.

EPA has proposed an NSPS to cut GHGs from new power plants, and that rule faces a pending utility sector lawsuit in federal appeals court. The agency appears to be delaying any GHG NSPS for existing plants.

The AEO comes after the Natural Resources Defense Council Dec. 4 issued a proposal for EPA to craft a flexible Clean Air Act rule to cut GHGs from existing utilities that eases requirements for coal-reliant states and credits all emission reduction actions, including switching to cleaner fuel, increasing efficiency and reducing demand.

In the energy outlook, EIA also predicts a growth in total U.S. energy production that exceeds growth in total consumption through 2040 while also reducing its projected growth in CO₂.

It says domestic crude oil production will significantly rise to 7.5 million barrels per day in 2019, up from 6 million in 2011; that gasoline consumption will fall at greater volumes than predicted in earlier outlooks; that the United States will become a net exporter of natural gas by 2020, a year earlier than prior projections; that renewable fuel use will grow much faster than fossil fuel use; and that net energy imports decline.

Important updates made to the 2013 AEO reference case -- which is a preview document for the full AEO to be released early next year -- include extending the projection period from 2035 to 2040; assessing the impacts of increased shale gas production; including the final 2017-2025 EPA GHG tailpipe rules; and updating power generation costs that capture recent price declines for renewable technologies, according to EIA.

The report prompted quick praise from energy industry interests. For example, the American Petroleum Institute (API)

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said the findings affirm "that the United States can use its ample supply of oil and natural gas to be a world leader in energy. We have an unprecedented opportunity to create millions of new jobs and generate hundreds of billions of dollars for our government." However, API added that to move forward, "We must avoid public policies that raise taxes, impose burdensome and unnecessary regulations, or pit one energy source against another."

Additionally, the Institute for Energy Research said in a statement that the EIA AEO "proves that American ingenuity and sensible regulation can unlock hundreds of years of affordable energy supplies under our feet, create good-paying jobs, and promote our nation's energy security" through safe hydraulic fracturing of oil and gas.

But Growth Energy, a renewable fuels group, said the AEO shows that hurdles remain to meeting renewable fuel standard volumetric requirements, including a "blend wall" that limits the percentage of renewables in conventional gasoline, and the need for increased market access for biofuels. -- Dawn Reeves

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